

ORIGINAL

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FRANK R. JAZZO
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LEONARD R. RAISH
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FRANK U. FLETCHER

OF COUNSEL
EDWARD A. CAINE*

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0415

RECEIVED

NOV 23 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

November 23, 1994

EX PARTE OR LATE FILED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Ex Parte Presentation - MM Docket No. 92-265

Dear Mr. Caton:

On this date, Marvin Rosenberg and Patricia A. Mahoney, representing United States Satellite Broadcasting Company, Inc. ("USSB"), made an oral ex parte presentation to Jill Luckett of Commissioner Chong's office.

The purpose of the presentation was to support USSB's "Opposition to Petition for Reconsideration of the National Rural Telecommunications Cooperative," submitted in MM Docket No. 92-265, filed on July 14, 1993. The discussion was limited to the status of the roll-out of DBS service and matters discussed in USSB filings in this proceeding. Also, a copy of the attached chart from the November 15, 1994 issue of DBS World was provided, together with copies of the attached letters.

USSB has participated in MM Docket 92-265 by filing Comments and Reply Comments in this proceeding.

An original and one copy of this letter and the attachments hereto are being filed. If additional copies of this filing are required, USSB will supply them immediately upon request.

No. of Copies rec'd
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FLETCHER, HEALD & HILDRETH, P.L.C.

Mr. William F. Caton
November 23, 1994
Page 2

Should any question arise concerning this matter, or should any additional information be necessary or desired, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.


Patricia A. Mahoney
Counsel for United States
Satellite Broadcasting
Company, Inc.

PAM:dlr

Enclosure

cc: Ms. Jill Luckett (w/enc.) (via hand delivery)

United States Senate

WASHINGTON, DC 20510

RECEIVED

NOV 23 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 24, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.

We appreciate your consideration of our views.

Sincerely,



Bob Packwood
U.S. Senate



Dan Coats
U.S. Senate

DSSTTM

(Digital Satellite System)

DirecTv Programming

Basic Channels

A&E
Black Entertainment
Television
Cartoon Network
Country Music Television
CNN
CNN International
CNBC
Court TV
C-Span
C-Span 2
Discovery
E!
ESPN
Family Channel
Headline News
The Learning Channel
Much Music
SCI-Fi Channel
Shopping
Travel Channel
The Weather Channel
TBS-Superstation
The Nashville Network
Turner Classic Movies
TNT
USA Network

Premium Channels

The Disney Channel East/West
Encore
Encore 2/Love Stories
Encore 3/Western
Encore 4/Tweens
Encore 5/Mystery
Encore 6/Action
Encore 7/True Stories & Drama
Playboy Channel

Pay-Per-View Movies

*Approximately 40+ Channels
with current hit films from:*
Paramount Pictures
Columbia Pictures
Sony Pictures Classics
TriStar Pictures
Turner MGM Film Library
Universal Pictures
Touchstone Pictures
Hollywood Pictures
Walt Disney Pictures
Warner Bros
Miramax Films

Pay-Per-View Sports

Up to 40 channels with
events expected from all
major sports leagues

Special Interest

Golf Channel
CBC Newsworld International
Physicians Television Network
Bloomberg Direct Financial
Music Choice (Digital Audio)
TRIO
Movie Preview Channel
Sports Preview Channel
Consumer Information

***List includes all DirecTv programming announced as of June 28, 1994**

DSS™

(Digital Satellite System)

USSB Programming

Basic Channels (6)

Lifetime
Nickelodeon/Nick at Nite
MTV
VH-1
Comedy Central
All News Channel

Premium Channels (14)

HBO East/West
HBO 2 East/West
HBO 3
Showtime East/West
Showtime 2
The Movie Channel East/West
Cinemax East/West
Cinemax 2
FLIX

***Includes all channels with which USSB will start. Expected future compression improvements should allow for additional channels/services. Current plans include public service, free advertiser supported services and special interest programming**

Congress of the United States
House of Representatives
Washington, DC 20515

August 24, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
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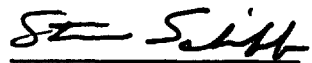
We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.


We appreciate your consideration of our views.


Sincerely,

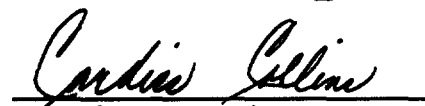

Harris W. Fawell
Member of Congress



Philip M. Crane
Member of Congress

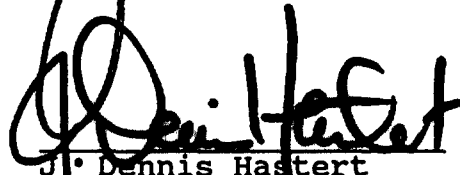

Steven H. Schiff
Member of Congress


Carlos V. Moorhead
Member of Congress


Scott L. Klug
Member of Congress


Cardiss Collins
Member of Congress


Jack Fields
Member of Congress


J. Dennis Hastert
Member of Congress

DSS™

(Digital Satellite System)

DirecTv Programming

Basic Channels

A&E
Black Entertainment
Television
Cartoon Network
Country Music Television
CNN
CNN International
CNBC
Court TV
C-Span
C-Span 2
Discovery
E!
ESPN
Family Channel
Headline News
The Learning Channel
Much Music
SCI-Fi Channel
Shopping
Travel Channel
The Weather Channel
TBS-Superstation
The Nashville Network
Turner Classic Movies
TNT
USA Network

Premium Channels

The Disney Channel East/West
Encore
Encore 2/Love Stories
Encore 3/Western
Encore 4/Tweens
Encore 5/Mystery
Encore 6/Action
Encore 7/True Stories & Drama
Playboy Channel

Pay-Per-View Movies

*Approximately 40+ Channels
with current hit films from:*

Paramount Pictures
Columbia Pictures
Sony Pictures Classics
TriStar Pictures
Turner MGM Film Library
Universal Pictures
Touchstone Pictures
Hollywood Pictures
Walt Disney Pictures
Warner Bros
Miramax Films

Pay-Per-View Sports

Up to 40 channels with
events expected from all
major sports leagues

Special Interest

Golf Channel
CBC Newsworld International
Physicians Television Network
Bloomberg Direct Financial
Music Choice (Digital Audio)
TRIO
Movie Preview Channel
Sports Preview Channel
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FLIX

***Includes all channels with which USSB will start. Expected future compression improvements should allow for additional channels/services. Current plans include public service, free advertiser supported services and special interest programming**

JEFF BINGAMAN
NEW MEXICO

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WASHINGTON, DC 20510-3102
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IN NEW MEXICO--1-800-443-8888
TDD (202) 224-1782

United States Senate

July 6, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I am aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. I believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS), are not covered by Section 19.

As the title of the Cable Act clearly indicates, that legislation specifically was designed to address the problems experienced by the public as a result of cable's practices.

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Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

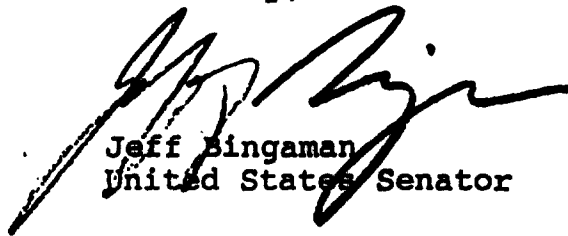
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Page 2

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I appreciate your consideration of these views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Bingaman', is written over the typed name and title.

Jeff Bingaman
United States Senator

JB/mss



Congress of the United States
House of Representatives
Washington, D.C. 20515

July 6, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

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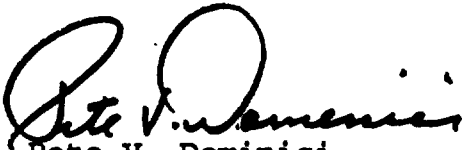
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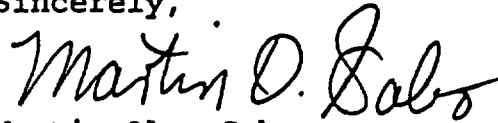
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We appreciate your consideration of our views.

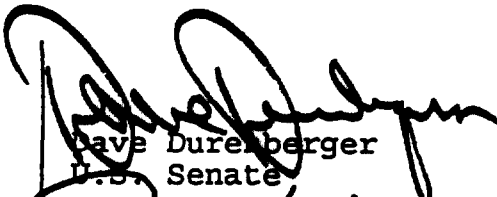


Pete V. Dominici
U.S. Senate

Sincerely,



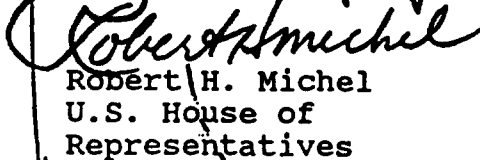
Martin Olav Sabo
U.S. House of Representatives



Dave Durenberger
U.S. Senate



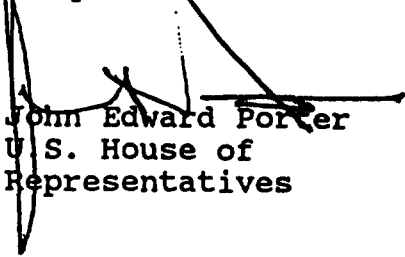
Bruce F. Vento
U.S. House of Representatives




Robert H. Michel
U.S. House of
Representatives



Bill Richardson
U.S. House of Representatives



John Edward Porter
U.S. House of
Representatives



Jim Ramstad
U.S. House of Representatives

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DISTRICT OFFICE
5438 WYOMING STREET
SUITE 600
LOS ANGELES, CA 90048-4183
(213) 551-1040

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA

August 16, 1994

ENERGY AND COMMERCE
CHAIRMAN, SUBCOMMITTEE ON
HEALTH AND THE ENVIRONMENT
GOVERNMENT OPERATIONS
PHILIP M. SCHLIER
ADMINISTRATIVE ASSISTANT

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

I am writing in support of the Federal Communications Commission's conclusion in its "First Report and Order" in MM Docket No. 92.265 regarding exclusive program contracts with noncable distributors.

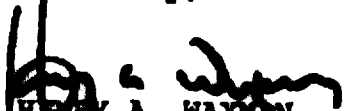
To foster healthy competition in program distribution services, Section 19 of the 1992 Cable Act forbids exclusive arrangements between cable operators and vertically integrated programmers in areas not served by cable. This section of the law was drafted to address the anticompetitive practices of cable companies, and not potential exclusive agreements by noncable distributors.

Although exclusive contracts can present dangers in the marketplace, they do not automatically pose an inherent danger to diversity and competition and, in certain circumstances, can be employed positively as a guard against monopolistic practices. Without the ability to distinguish their programming from larger competitors, small rivals would not survive and consumers would suffer the effects of the resulting lack of competition. Such an outcome would directly contradict the express purposes for which the 1992 Cable Act was passed. Selectively approved exclusive contracts could mitigate this impact. If these contracts are authorized, however, great care must be taken to ensure against long-term anti-competitive effects.

Thank you for your consideration of my views on this matter.

With kind regards, I am

Sincerely,


HENRY A. WAXMAN
Member of Congress

Congress of the United States
Washington, DC 20515

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

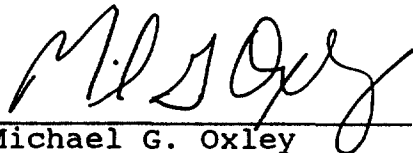
Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.

We appreciate your consideration of our views.

Sincerely,



Michael G. Oxley
Member of Congress



J. Alex McMillan
Member of Congress

Congress of the United States
House of Representatives
Washington, D.C. 20515-4305

JOHN BRYANT
8TH DISTRICT, TEXAS
CHAIRMAN
SUBCOMMITTEE ON
ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS

COMMITTEE ON
ENERGY AND COMMERCE
COMMITTEE ON
THE JUDICIARY
COMMITTEE ON
THE BUDGET

September 23, 1994

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

I want to join several of my colleagues who have contacted you in support of Section 19, the program access provision of the Cable Act of 1992. I support the Federal Communications Commission's "First Report and Order" regarding exclusive program contracts with non-cable distributors.

I believe that the goal of Section 19 is to address exclusive practices by cable operators, and non-cable operations, such as direct broadcast satellite (DBS) are not covered by it.

The Cable Act was specifically designed to address the problems the cable consumer faced as a result of cable's monopolistic practices, which my constituents complained was due to the cable operators' abuses of their power.

Section 19, which addresses cable programming practices, precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. A careful review of the Cable Act and its legislative history will confirm that the measure only deals with program contracts involving cable operators.

We must keep in mind that a fundamental purpose of Section 19 is to promote technologies that can compete with cable operations. I think competitive exclusivity in DBS operations is necessary if a non-cable operator with a small number of channels is to be competitive with another program distributor offering more, but different channels. To deny competitive exclusivity to such competitive operators could have the perverse effect of creating a monopoly within DBS, by limiting a DBS operator's ability to increase his program offerings, better compete with cable, and offer unique services to the customer.

The Honorable Reed E. Hundt
September 23, 1994

Page 2

I believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- are correct, and the rules adopted by the FCC thus properly implement Section 19. I understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

I appreciate your consideration of my views, and look forward to working with you and the members of the Commission to make the most diverse programming available to the American consumer - over cable or telephone lines, or by Direct Broadcast Satellite.

Sincerely,


JOHN BRYANT
Member of Congress

JB:bc

cc: Honorable James Quello
Honorable Andrew Barrett
Honorable Rachelle Chong
Honorable Susan Ness

TOLL FREE TELEPHONE NUMBER:
1-800-465-8930

DISTRICT OFFICES:
8500 MAIN STREET
WILLIAMSVILLE, NY 14221
(716) 334-3320

19 EAST MAIN STREET
VICTOR, NY 14564
(716) 743-1900

CAPITOL OFFICE:
1314 LONGWORTH
HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4200



Congress of the United States
House of Representatives

BILL PAXON
27TH DISTRICT, NEW YORK

SATELLITE OFFICES:
(BY APPOINTMENT)
310 EAST MAIN STREET
CATALPA, NY 14020
181 MAIN STREET
GENESEE, NY 14454
611 WEST WASHINGTON STREET
GENEVA, NY 14456
10 LEACH ROAD
LYONS, NY 14486
117 FALL STREET
SANDICA FALLS, NY 13146
28 NORTH MAIN STREET
WARSAW, NY 14569

October 10, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to you in regards to Section 19, the program access provision, of the Cable Act of 1992 and its applicability to non-cable operations such as direct broadcast satellites (DBS).

As you already know and as my colleagues have informed you Section 19 of the Cable Act addresses cable programming practices. It prevents cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It is important to note that the Cable Act does not address non-cable operations like DBS.

Competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have a perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

With this in mind, I would like to state my support of the Commission's initial conclusions in its "First Report and Order." I believe that Section 19 applies only to cable operators and the rules adopted by the FCC thus properly implement Section 19. As I understand, the Attorneys General of 45 states and the District of Columbia, and the Department of Justice all agree that the Cable Act of 1992 does not prohibit exclusive contracts by the DBS providers and programmers.

I appreciate your time and consideration in this most important matter. Please do not hesitate to contact me or David Marventano of my staff to discuss this further.

Best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "BP" or "B. Paxon", written in a cursive, stylized font.

BILL PAXON
Representative

BP: dm

SHERROD BROWN
THIRTEENTH DISTRICT
OHIO

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
(Vice-Chairman)
SUBCOMMITTEE ON HEALTH AND
THE ENVIRONMENT

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Congress of the United States
House of Representatives
Washington, DC 20515

October 27, 1994

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(216) 832-0013

The Honorable Reed Hundt
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to you to express my interest and concern surrounding the FCC's rulemaking on competition and diversity in video programming distribution.

The situation facing the direct broadcast satellite (DBS) industry merits our close scrutiny as we go about creating a vital telecommunication infrastructure. Most importantly, I believe congressional intent in the 1992 Cable Act was to foster increased competition. In relation to the DBS industry, I believe that increased competition may actually require the use of exclusivity arrangements.

As you know, DirectTV has a 5-1 (150-30 channel) capacity advantage over USSB. Without the possibility of differentiating itself from DirectTV through the use of unique programming, USSB will be unable to attract customers with its more limited offering. In addition, DirectTV already has its own form of "de facto" exclusivity by providing over 120 channels of programming that USSB can not even "fit" into its capacity. I do not consider this scenario to reflect a level playing field for competitive purposes.

At the same time, I appreciate the Commission's concerns about allowing programmers and distributors to monopolize any significant portion of the industry. Vertical integration by programmers and distributors is a real and worthwhile concern for the FCC to monitor.

In your continuing efforts to implement Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 I ask that you consider the realities of the limitations USSB faces due to its limited capacity. Your attention to this issue is greatly appreciated.

Sincerely,


Sherrod Brown
Member of Congress

SENT BY:

7-14-94 : 2:49PM :

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July 8, 1994

COMMITTEE ON
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The Honorable Reed Hunt
Chairman, Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

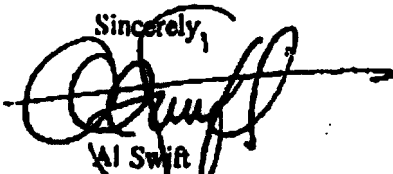
Dear Chairman Hunt:

I am writing you concerning the issue of program exclusivity as it pertains to Direct Broadcast Satellite (DBS) services. I was an active proponent of the purposes of the 1992 Cable Act, and in particular, the goal of creating viable and robust DBS services to offer competition to existing cable monopolies.

As you know --and as the Act's title clearly indicates--the legislation was specifically designed to address the problems suffered by the public as a result of monopolistic practices by certain large cable companies. Competition by DBS was intended to be part of the public's solution, never part of the problem. Therefore it is my belief that a search of the Act and the legislative history will confirm that only program contracts involving cable operators are intended to fall within the province of the 1992 Cable Act.

In that regard, I want to state my support for the Commission's conclusion in its "First Report and Order" in MM Docket No. 92.265. I believe the Commission properly construed the exclusivity provisions of Section 19 as applicable to cable operators only. And it is my understanding that the Department of Justice, and the attorneys general of 45 states also agree that there is no bar in the Cable Act of 1992 to exclusive contracts by DBS providers and programmers.

Thank you for your consideration of my views on this matter.

Sincerely,

Al Swift
Member of Congress

AS/lbk

PAUL SIMON
ILLINOIS

COMMITTEES:
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET
INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-1302

August 19, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Reed:

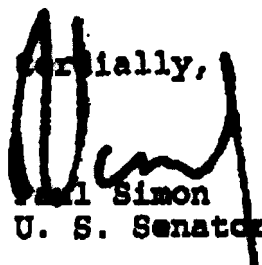
I have been hearing from people on both sides of the controversy regarding Section 19 of the Cable Act.

I am probably the least informed person writing to you on this.

I have looked over the correspondence and discussed this twice with my staff. It seems to me the enclosed letter from Jeff Bingaman to you merits serious consideration.

I have worked with Jeff on a great many things, and I know he does not enter these things lightly.

I wish you the best.

Sincerely,

Paul Simon
U. S. Senator

PS/jw

Enc.

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NEW MEXICO

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United States Senate

July 6, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I am aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. I believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS), are not covered by Section 19.

As the title of the Cable Act clearly indicates, that legislation specifically was designed to address the problems experienced by the public as a result of cable's practices.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable if the FCC determines that such contracts are in the public interest. I submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

I believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and that the rules adopted by the FCC thus properly